In the Supreme Court of the United States

OCTOBER TERM, 1960

No. [illegible]

KING COLONY RANCH, an association, and
KING COLONY RANCH, a corporation,
Petitioners,

vs.

THE STATE OF MONTANA,
Respondent.

REPLY BRIEF OF THE PETITIONERS TO THE BRIEF IN OPPOSITION TO THE WRIT OF CERTIORARI.

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To the Honorable Chief Justice and to the Associate Justices of the Supreme Court of the United States:

Pursuant to the rules of this Honorable Court the petitioners herein desire to present a brief consideration of the respondent's brief in opposition to the petition for writ of certiorari. No new arguments or authorities will be presented. This brief is solely for the purpose of considering the arguments and authorities of respondent.

PETITIONERS' AUTHORITIES

The respondent, under the above heading, argues that the activities of the King Colony on which the tax herein involved falls are "purely commercial." As to the arguments presented by the respondent under this heading we would point out that respondent has entirely misconceived and misunderstood the position of the petitioner. We concede that there is no element of religious practice involved in the sale of farm and ranch products but the tax here imposed is not simply a tax upon the sale of farm and ranch products. It is a license tax imposed for the privilege of conducting that business or any other business in the corporate or association form. The assumption of the corporate or association form by the petitioner is a direct rect result and therefore a part of the religious practice and beliefs of petitioners' members, consequently the imposition of this tax upon the petitioners is an imposition resulting from their religious practices and beliefs. This tax is not imposed upon private individuals engaged in agricultural pursuits nor is it imposed upon partnerships engaged in agricultural pursuits. Both of these avenues of conducting business activities are closed to the members of the petitioner by reason of their religious beliefs and the requirements that the petitioner pay a license fee for the privilege of conducting thmselves in the only manner supplied by the law which is consistent with their religious beliefs results in an imposition of a tax upon an activity which is protected by the First Amendment.

PETITIONERS CAN RAISE THE QUESTION OF RELIGIOUS LIBERTY.

Respondents principal argument in opposition to the petition for Certiorari is presented in support of the proposition that the petitioners, being a corporation and association, cannot raise the question here presented. In support of their position they cite four cases: Hague vs. C.I.O., 307 U.S. 496, 595 Sup. Ct. 954, 83 L. Ed. 1423, Northwest National Life Insurance Co. vs. Riggs, 203 U.S. 243 51 L. Ed. 168, Western Turf Association vs. Greenberg, 204 U.S. 359, 51 L. Ed. 520, International Ladies Garment Workers vs. Seamprufe, Inc., 121 Fed. Supp. 165.

In our petition for certiorari we demonstrated that this Court, while it has held that a corporation is not a citizen within the meaning of the privileges and immunities clause of the Fourteenth Amendment, has likewise held that a corporation is a person within the meaning of the Equal Protection and Due Process of Law clauses, see Grosjean vs. American Press Co., 297 U.S. 233, 56 Sup. Ct. 444, 80 L. Ed. 660, and has treated the religious freedom guaranteed by the First Amendment as coming within the Due Process clause of the Fourteenth Amendment.

See: Minersville School District vs. Gobitis, 310 U.S. 586, 60 Sup. Ct. 1010, 84 L. Ed. 1375. See also the annotation appearing in 96 L. Ed. at page 968 wherein the annotator, at page 969, makes the following statement:

" 'The freedom of religion which is protected against federal legislation by the First Amendment of the Federal Constitution is also protected against invasion by state action, by reason of the language of the Fourteenth Amendment, declaring that no state shall deprive any person of liberty without due process of law.' Citing 'Schneider v. Irvington (1929) 308 U.S. 1947, 84 L. Ed. 155, 60 S. Ct. 146; Cantwell v. Connecticut (1940) 310 U.S. 296, 84 L. Ed. 1213, 60 S. Ct. 900, 128 ALR 1352; Re Summers (1945) 325 U.S. 561, 89 L. Ed. 1795, 65 S. Ct. 1307, reh den 326 U.S. 807, 90 L. Ed. 491, 66 S. Ct. 94; Everson v. Board of Education (1947 (330 U.S. 1, 91 L. Ed. 711, 67 S. Ct. 504, 168 A.L.R. 1392, Reh Den 330 U.S. 855, 91 L. Ed. 1297, 67 S. Ct. 962; Illinois ex rel. McCollum v. Board of Education (1948) 333 U.S. 203, 92 L. Ed. 649, 68 S. Ct. 461, 2 ALR 2d 1338'."

Considering the cases cited by the respondent we find that none of them involved the particular issue here raised. Hague vs. C.I.O., supra, 307 U.S. 496, involved the right of the people peaceably to assemble which was considered by this Court to be within the Privileges and Immunities Clause of the Fourteenth Amendment. The Court at page 514 of 307 U.S. said:

"Natural persons, and they alone, are entitled to the privileges and immunities which §1 of the Fourteenth Amendment secured for 'citizens of the United States.' Only the individual respondents may, therefore, maintain this suit."

Northwestern National Life Ins. Co. vs. Riggs, supra, 203 U.S. 243, does not specifically delineate the particular privilege, liberty, freedom or right involved, but certainly it was not freedom of religion with which we are here concerned. Furthermore, that case appears to the authors of this brief to be in conflict with Grosjean vs. American Press Co., supra, 297 U.S. 233.

Western Turf Ass'n. vs. Greenburg, supra, 204 U.S. 359, also dealt with a matter held by this Court to be within the Privileges and Immunities Clause of the Fourteenth Amendment. Insofar as that case speaks of the Due Process Clause, it, likewise, seems to be in conflict with the Grosjean case. International Ladies Garment Workers Union vs. Seampruf Inc., supra, 121 Fed. Supp. 165, is likewise concerned with a matter other than freedom of religion and does not appear to be in point.

We recognize that there has been no cause decided by this Honorable Court which specifically answers this question but, contrary to respondent's assertion, we did cite in our petition a case from a Federal Court which involved a direct holding that a corporation could raise this question. We refer to Kotohira Jinshaw v. McGrath, 90 Fed. Supp. 892.

We respectfully submit that the brief in opposition filed herein presents no valid argument upon which this petition could be denied and we again respectfully submit

that this petition is one which merits a full hearing by this Court.

Respectfully submitted,

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